

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re Scotts EZ Seed Litigation

Civil Action No. 12-cv-4727 (VB)

**DECLARATION OF MICHAEL ARCURI IN SUPPORT OF PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION, APPOINTMENT OF CLASS REPRESENTATIVES,  
AND APPOINTMENT OF CLASS COUNSEL**

I, Michael Arcuri declare as follows:

1. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.

2. I am one of the representative plaintiffs in this class action. This Declaration is given in support of my request that the court certify this case as a class action, appoint Plaintiffs as class representatives, and appoint Bursor & Fisher, P.A. and Faruqi & Faruqi, LLP (collectively, "Interim Class Counsel") as class counsel.

3. I am a citizen of New York who resides in Clay, New York.

4. I was deposed by Defendants' counsel on January 23, 2014. In response to questioning, I testified about my understanding of the claims asserted in this case:

Q: What claims are [you asserting in this case]?

A: Breach of warranty and false advertising [concerning Scotts EZ Seed].

Arcuri Dep. at 178:15-17, Marchese Decl. Ex. C.

5. I also testified regarding the details of my purchase of EZ Seed and my alleged damages in this action:

Q: Was that jug the one and only time that you've purchased EZ Seed?

A: Yes.

Q: And at that time you only purchased a single cannister [sic]?

A: Correct.

...

Q: To[] your recollection did the purchase occur on March 30th, 2012?

A: Yes.

Q: So when you drive to Home Depot, where was the Home Depot located?

A: Cicero, which is about ten minutes from my house.

...

Q: How much did you pay for the EZ Seed?

A: \$7.37.

*Id.* at 51:11-16; 166:14-20; 172:20-21.

6. I also testified that I relied on the packaging claims at issue when deciding to purchase Scotts EZ Seed:

Q: Did you remember when you picked up the EZ Seed package and looked at it what it was that convinced you to purchase the product?

A: It said it grew “50% thicker with half the water.” It claimed to grow grass anywhere: dense shade, direct sunlight, and under any conditions. So to me that seemed like an easy seed to plant.

Q: Would you have purchased EZ Seed if the package was identical but ha[d]n’t made the claim “50% thicker with half the water”?

A: Probably not.

Q: What did the claim “50% thicker with half the water” mean to you when you read it?

A: That the grass is going to grow thicker with half the water.

Q: Thicker than what?

A: Thicker than ordinary grass seed.

...

Q: And do you see on the front label where it says, “50% thicker with half the water”?

A: Yes.

Q: Is that one of the representations that you testified earlier to which was important to your decision to purchase EZ Seed?

A: Yes.

Q: Based on your personal experience using EZ Seed, was that representation truthful?

A: No.

Q: Sitting here today, do you have any reason to believe that the “50% thicker with half the water” claim has ever changed on the product packaging?

A: No.

Q: So then everyone in the class would have been exposed to the same claim that you were exposed to; correct?

A: Yes.

...

Q: Other than the “50% thicker with half the water,” can you identify for me any other claim on the product label that was important to you when deciding to purchase EZ Seed?

A: It will grow anywhere. It grows in dry, sunny areas, dense shade, even grows on pavement. And it’s a premium seed, revolutionary seed mix. It grows anywhere.

*Id.* at 41:21-42:14; 197:6-24; 198:22-199:5.

7. I also testified that I followed the directions for use that appeared on the EZ Seed packaging when applying EZ Seed:

Q: Okay. So you’ve applied your topsoil to the spot where you intend to plant EZ Seed, and you’ve raked it out. And it’s the next day or whenever

you planted EZ Seed. To the best of your recollection, can you tell me what you did next?

A: I followed the instructions on the cannister [sic].

*Id.* at 61:15-21; 61:22-65:25.

8. I also testified that EZ Seed did not work as advertised:

Q: So tell me what happened as time went on. What did you see happen with EZ Seed?

A: Nothing happened.

Q: What do you mean by “nothing”?

A: Nothing. It looked like the day I put it down.

*Id.* at 76:21-77:2.

9. I also testified about my understanding of the responsibilities of being a class representative. *Id.* at 181:3-23. And I testified about how I have been carrying out my duties as a potential class representative thus far. For example, I testified that after hiring qualified lawyers, I periodically spoke to them “as we were forming the complaint that was filed with the court.” And after the complaint was filed, I have engaged in “[m]ultiple follow-up calls with [my lawyers],” responded to discovery requests, and sat for a lengthy deposition. *Id.* at 195:13-196:8. Additionally, I testified that I am prepared to see this case through to its conclusion, even if that means going to trial. *Id.* at 196:9-13.

10. I have consulted with my counsel periodically to review, discuss, and determine the actions to be taken and decisions to be made in pursuit of this case on behalf of all class members. Based on these interactions and my relationship with my counsel, I believe my counsel has fairly and adequately represented the class and will continue to do so.

11. I understand that, as a class representative, I have an obligation to assert and protect the interests of other class members and not act just for my own personal benefit. I do not have any conflict with other class members. I will do my best to protect the interests of other class members and will fairly and adequately represent the class to the best of my ability.

12. It is my understanding that Defendants sold me the same product as it did all other class members who bought Scotts EZ Seed. I therefore request that the court certify a class of all persons who purchased Scotts EZ Seed in the state of New York, excluding persons who purchased for purpose of resale.

13. I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct. Executed on March 28, 2014 at Clay, New York.

  
Michael Arcuri